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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,313	11/28/2000	Anthony D. Gonzalez	682.0021USU	6496

7590 06/11/2004
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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/724,313

Applicant(s)

GONZALEZ ET AL.

Examiner

Neil Levy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, 10-23, 25-27 and 29-46 is/are pending in the application.
- 4a) Of the above claim(s) 35 and 37-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-23, 25-27, 29-34, 36, 43-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-3, 5-8, 10-23, 25-27, 29-46 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 35, 37-42 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/27/04.

The 112 rejections are withdrawn, in view of amendments, explanations.

Species requirement is maintained, as accepted Markush practice and burdensome.

Claims 5, 10, 11, 34, 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 now depends on cancelled 4, 10, and 11 on cancelled 9.

Claims 1-3, 5-8, 10-12, 16, 26, 27, 34, 44 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mailander et al 3303091.

The rejection of record is maintained. Shown is the instant composition, able to be used on skin, as components are those of the instant. See claim 2: 5% insecticide (DEET, col. 8, top), 35% water, and 25% propellant. (Propane, isobutene (top, col. 13) alcohols include menthol, propylene glycol (col. 8, top, col. 15, top) in small amounts (col. 10, lines 26-43). The non -Voc includes esters (see examples) col. 15, top – 2%).

Claims 1-3, 5-8, 10-23, 25-27, 29-34, 43-46 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chaussee-4970220.

The rejection of record is maintained.

Here, too we find adequate disclosure for one in the art to immediately envision the instant invention as claimed, or to add those components in the ratios of compatibility, to provide the desired combinations of skin care components sunscreen, moisturizer, insect repellent, for example.

Claims 1-3, 5-8, 10-14, 16, 20-22, 26, 27, 32-34, 43, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Neumiller - 5145604.

The rejection of record is maintained, assuming claims 5, 10, 11 depend on claim 1.

Claims 1, 5-8, 10-12, 16-19, 26, 27, 29, 30, 34, 43-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Mailander et al 3303091 and Dohara et al 5055299.

Mailander (above) and Dohara (previous office action) provide the essence of the instant compositions, absent ingredients precluding of use on human skin. However, the Dohara active is pyrethrin, Mailander, pyrethrins, equivalently DEET (col. 7, lines 61- line 12, col. 8). Dohara also utilize. The instant alcohols. Thus, one of ordinary skill would have found it obvious to utilize the DEET of Mailander and alcohol, in small amount, of Dohara, with water and propellant substitution, to achieve an optimized aerosol composition to control insects. Motivation to combine these teachings is present

in Mailander – insect repellant or insecticide, as desired, can be prepared, but stability problem (Mailander, col. 2, lines 5 + 7 is solved by Dohara (col. 1, lines 10-16).

Applicant's arguments filed on 2/27/04 have been fully considered but they are not persuasive. Applicants arguments in essence are that the specific examples of the cited prior art do not have the required % of components as are now claimed. However, we find one in the propellant art quite capability of combining components in amounts desired to provide safe, stable repellents in safe carriers and solvents with added components as are well known in the art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR
June 4, 2004



NEIL S. LEVY
PRIMARY EXAMINER